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10

11 **UNITED STATES DISTRICT COURT**  
12 **CENTRAL DISTRICT OF CALIFORNIA**

13 BARBARA GRADY, individually and  
14 on behalf of all others similarly  
15 situated,

16 Plaintiffs,

17 vs.

18 RCM TECHNOLOGIES, INC.,

19 Defendant.

20 Case No.: 5:22-cv-00842 JLS-SHK

21 **PLAINTIFF'S NOTICE OF MOTION  
22 AND MOTION FOR FINAL  
23 APPROVAL OF CLASS ACTION  
24 AND PAGA SETTLEMENT;  
25 MEMORANDUM OF POINTS AND  
26 AUTHORITIES IN SUPPORT  
27 THEREOF**

28 **Date:** February 21, 2025

**Time:** 10:30 a.m.

**Location:**

Courtroom 8A, 8th Floor  
First Street U.S. Courthouse  
350 West 1st Street,  
Los Angeles, CA 90012

Complaint Filed: February 7, 2022

1 **NOTICE OF MOTION AND MOTION**

2 TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

3 Please take notice that on **February 21, 2025, at 10:30 a.m.**, or as soon  
4 thereafter as the matter may be heard, in the Courtroom of the Honorable Josephine  
5 L. Staton, Courtroom 8A, 8th Floor, United States District Court, Central District  
6 of California, First Street U.S. Courthouse, 350 West 1st Street, Los Angeles, CA  
7 90012, Plaintiff Barbara Grady (“Plaintiff”) will hereby move this Court for an  
8 Order granting final approval of the Class Action and PAGA Settlement Agreement  
9 between Plaintiff and Defendant, which was preliminarily approved by the Court on  
10 November 13, 2024.

11 The Motion is made following the conference of counsel pursuant to L.R. 7-3.

12 This Motion is based on the accompanying Memorandum of Points and  
13 Authorities; the Declaration of Joshua G. Konecky in support of the Motion,  
14 including the Joint Stipulation of Class Action and PAGA Settlement and Release,  
15 attached as Exhibit A to the Declaration; the Declaration of Alexander Williams, Vice  
16 President of Operations at JND Legal Administration (JND), including a copy of the  
17 finalized Notice of Class Action Settlement sent by JND by mail and email to the  
18 Settlement Class Members, attached as Exhibits B and C to the Declaration; such oral  
19 argument as may be heard by the Court; and all other papers on file in this action.

20  
21 Dated: December 26, 2024

Respectfully Submitted,

22  
23 **SCHNEIDER WALLACE**  
**COTTRELL KONECKY LLP**

24  
25 */s/ Joshua G. Konecky*  
26 Joshua G. Konecky  
27 Attorney for Plaintiffs

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 Plaintiff seeks final approval of the proposed Class Action and PAGA Settlement  
4 Agreement that the Court preliminarily approved on November 13, 2024 (Dkt. 48).  
5 It is a non-reversionary settlement to resolve California wage and hour claims of non-  
6 exempt nurses employed by Defendant RCM to work at Covid testing and vaccination  
7 sites in California between March 1, 2020 and March 7, 2023.

8 Since the Court's Preliminary Approval Order, the parties have worked with the  
9 Court-appointed Settlement Administrator, JND Legal Administration (JND), to  
10 ensure implementation of the Settlement Notice process approved by the Court in its  
11 Preliminary Approval Order. On December 11, 2024, the Settlement Administrator  
12 sent the Court approved Settlement Notice by U.S. mail to the 1,097 Settlement Class  
13 Members identified in the Class Data provided by Defendant and by email to the  
14 approximately the 1,077 Settlement Class Members for whom Defendant had email  
15 addresses. It will forward any undeliverable Notices to new addresses obtained from  
16 the post office and/or skip tracing. The Settlement Administrator also activated the  
17 toll-free information line and the Settlement website on December 11, 2024.

18 The last day for Settlement Class Members to postmark timely objections,  
19 disputes and requests for exclusion is January 27, 2025. Plaintiff will update the  
20 Court as to any objections, disputes, and requests for exclusion received with her  
21 Reply Brief to be filed by February 14, 2025.

22 For the reasons previously discussed in connection with Plaintiff's Motion for  
23 Preliminary Approval and highlighted again below, the proposed Settlement meets  
24 the standards for final approval under Rule 23(e)(2) and applicable law. Additionally,  
25 as set forth below, the PAGA portion of the Settlement also should be approved  
26 because its terms are fundamentally fair, adequate, and reasonable in light of PAGA's  
27 policies and purposes. Finally, Plaintiff is filing separate motions for approval of  
28 reasonable attorneys' fees and costs pursuant to Rule 23(h) and for a service award to

1 the Class Representative. Subject to any findings the Court might make based on the  
2 Class Member response to the Settlement Notice or otherwise at the Final Approval  
3 Hearing, or any other developments that may occur, Plaintiff requests that the Court  
4 grant final approval of the Settlement.

5 **II. BACKGROUND**

6 A description of the claims and citation to the evidence presented during the  
7 case can be found in Plaintiff's Motion for Class Certification, filed June 21, 2024  
8 (ECF No. 41), and Plaintiff's Motion for Preliminary Approval, filed July 26, 2024  
9 (ECF No. 44).

10 In summary, Plaintiff Barbara Ann Grady worked as a temporary nurse for  
11 Defendant RCM Technologies (USA), Inc. (RCM) during the Covid-19 pandemic. A  
12 component of RCM's business is healthcare staffing. It has a "travel division" that  
13 hires and assigns nurses to work at various healthcare clinics and facilities, including  
14 in California. During 2020-2022, approximately 90% of the RCM's nurse placement  
15 business in California was for Covid testing.

16 RCM had one client, the County of San Bernardino, for Covid testing at  
17 approximately 25 "pop up" centers, and two other clients, Ginkgo Concentric and the  
18 Los Angeles Unified School District (LAUSD), for Covid testing and/or vaccination  
19 in the schools – Ginkgo had approximately 25 school sites, and LAUSD had  
20 approximately 15 school sites. There was a high degree of similarity between the job  
21 duties of the nurses across these placements.

22 During the Settlement Class Period (March 1, 2020 to March 7, 2023) RCM  
23 placed approximately 382 individuals to work at Covid testing pop-up sites for San  
24 Bernardino County, and a total of 721 individuals to perform Covid testing and/or  
25 vaccinations at K-12 school sites – 612 for Ginkgo and 109 for LAUSD. During the  
26 Settlement Class Period, these individuals worked approximately 26,580 shifts in the  
27  
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1 pop-up sites and 35,760 shifts in the K-12 schools. The Covid testing placements  
2 rarely occur anymore.

3 As more fully described in the Motion for Class Certification, Plaintiff  
4 maintains that RCM failed to live up to its affirmative legal duty to provide meal and  
5 rest periods to its employees, and to prevent off-the-clock work, at the Covid testing  
6 and vaccination sites during the pandemic. *See* ECF No. 41 at 11:4-16:21. For  
7 example, Plaintiff alleges that RCM over-relied on its clients to provide the  
8 opportunity for compliant meal and rest periods, and to ensure that all compensable  
9 time was recorded on the timecards. *Id.* at 11:4-13:4. However, as Plaintiff further  
10 maintains, RCM's clients did not have the contractual obligation, financial incentive,  
11 or administrative capacity to perform this function, and RCM did not sufficiently  
12 monitor the working conditions to safeguard the employees' rights. *Id.* at 4:16-5:13,  
13 11:12-18.

14 In addition to deposition testimony and evidence from RCM regarding the  
15 common scope of its policies, Plaintiff also cited to testimony from Class Members  
16 as anecdotal evidence of the alleged impact that RCM's policies and approach had  
17 on the employees working at the client sites. *Id.* at 5:14-7:2. Plaintiff maintains that  
18 RCM's overreliance on the clients to safeguard the rights of its employee had a  
19 particularly detrimental impact on the nurses during the Covid-19 pandemic. *Id.* at  
20 1:10-12, 3:18-4:9, 5:14-7:2, 13:25-14:8.

21 Plaintiff further cited template emails RCM sent to its nurses in California  
22 during the pandemic evidencing what Plaintiff describes as a policy of assuming  
23 Class Members received compliant meal periods and automatically deducting time  
24 for them from their hours worked. *Id.* at 7:5-13. Plaintiff maintained that this policy  
25 unlawfully shifted the burden onto the nurses to prove that meal periods were not  
26 compliant and that there was not a reliable method of communication with RCM for  
27 them to meet this burden. *Id.* at 13:5-14:27. Plaintiff also cited testimony that RCM  
28 permitted its clients to secure verbal agreements with the nurses to waive meal

1 periods (which Plaintiff alleged were unlawful). *Id.* at 7:20-8:2, 15:1-15. Finally,  
2 Plaintiff cited pay records showing the lack of meal and rest period premiums as  
3 evidence in support of her argument that RCM did not have a policy for paying meal  
4 and rest period premiums in California until the tail end of the Settlement Class  
5 Period. *Id.* at 8:3-9:11, 13:25-14:8.

6 RCM vigorously disputed Plaintiff's claims and theories of liability. For  
7 example, RCM maintained that its written policies were lawful on their face, and that  
8 employees were instructed about their breaks and told to record all time worked.  
9 RCM further argued that insomuch as the nurses worked at the client facilities, its  
10 clients had compliant processes and it was lawful for RCM to rely on the clients to  
11 supervise the employees and implement schedules to allow for meal and rest periods.  
12 RCM also maintained that employees could contact RCM representatives if there  
13 were problems, and that the deficiencies Plaintiff alleged did not cause violations on  
14 the ground.

### 15 **III. PROCEDURAL HISTORY**

16 On July 22, 2021, Plaintiff submitted a notice letter to the Labor Workforce and  
17 Development Agency (LWDA) specifying her claims under the Private Attorneys  
18 General Act (PAGA). *See* Declaration of Joshua Konecky in Support of Motions for  
19 Final Approval, Reasonable Attorneys' Fees and Costs, and Service Award  
20 ("Konecky Decl.") at ¶7. On February 7, 2022, Plaintiff filed a class action and law  
21 enforcement complaint in the San Bernardino County Superior Court, which RCM  
22 removed on May 19, 2022. *Id.* at ¶8; ECF 1. The parties thereafter agreed to  
23 mediation and the production of to facilitate mediation. *Id.* at ¶¶19-22.

24 After RMC produce written policies and aggregate data, the Parties engaged in  
25 a full-day mediation before Michael J. Loeb of JAMS on December 7, 2022. *See*  
26 Konecky Decl. at ¶¶11-15. This resulted in a proposed settlement for \$1,600,000.00,  
27 on behalf of a settlement class consisting of approximately 1,414 individuals who  
28

1 worked a combined 90,939 shifts for RCM as a traveling nurse or like hourly position  
2 anywhere in California between October 8, 2017 and March 7, 2023. *See* ECF No.  
3 31-2 at ¶¶6, 7, 15, 66.

4 On May 2, 2023, the Court denied preliminary approval of that settlement  
5 without prejudice for several reasons, including the failure to show sufficient  
6 investigation into the claims and potential value of the case. *See* ECF No. 30. On  
7 September 7, 2023, the Court denied Plaintiff's renewed motion for final approval  
8 based on the lack of information provided to assess commonality, typicality, and the  
9 reasonableness of the settlement, among other things. *See* ECF No. 35 at 9:5-10:17,  
10 12:21-13:8. On February 5, 2024, the Court denied the parties' request to conduct a  
11 joint survey of class members as part of the settlement approval process and ordered  
12 Plaintiff to show cause why the stay should not lift so that litigation may resume. *See*  
13 ECF No. 38. Plaintiff responded that she would no longer seek approval of the  
14 settlement and that litigation should resume. ECF No. 39. On February 18, 2024, the  
15 Court discharged the Order to Show Cause and set a litigation schedule for the case.  
16 ECF No. 40.

17 Following receipt of the Court's Order, the Parties engaged in significant  
18 written discovery, depositions, and further investigation directed toward both class  
19 certification issues and the merits of the claims. *See* Konecky Decl. at ¶¶20-22.  
20 Defendant produced additional documents and data beyond what was earlier  
21 produced. *Id.* This consisted of class member contact information and additional  
22 policies and additional procedures applicable to California placements during the  
23 putative class period. *Id.* Plaintiff also propounded, and Defendant answered,  
24 interrogatories to show the breakdown of assignment types and work settings within  
25 the originally alleged class, including related information pertaining to that  
26 breakdown. *Id.* Defendant also supplemented information produced previously in  
27 the case showing, by employee ID, the daily work hours recorded, the type of service  
28

1 being provided, the applicable wage rates, and related information. *Id.*

2 Both parties also proceeded with depositions. Defendant took the deposition of  
3 the named Plaintiff. *Id.* at ¶21. Plaintiff took the deposition of Defendant's Director  
4 of National Recruiting, and the deposition of Defendant's 30(b)(6) designee on topics  
5 including: the work assignments, settings, and job duties of the putative class  
6 members; the policies, procedures, and practices pertaining to meal and rest periods;  
7 the policies, procedures, and practices pertaining to wages and compensation of  
8 putative class members; and the policies, procedures, and practices pertaining to  
9 approval and/or payment of overtime and double time, amongst other topics. *Id.*

10 Plaintiff engaged in further informal discovery as well, interviewing putative  
11 class members and obtaining signed declarations in support of her Motion for Class  
12 Certification. *Id.* at ¶22.

13 On June 21, 2024 Plaintiff filed her Motion for Class Certification. *See* ECF  
14 No. 41. Thereafter, the Parties met and conferred regarding the potential to re-engage  
15 in settlement discussions in advance of the class certification hearing. *See* Konecky  
16 Decl. at ¶24. The Parties then participated in a full-day mediation with mediator  
17 Michael Loeb on July 2, 2024, following which the mediator issued a mediator's  
18 proposal for the proposed class action and PAGA settlement that is the subject of the  
19 instant motion. *Id.* at ¶¶24-25. The Parties accepted the mediator's proposal on July  
20 8, 2024. *Id.* at ¶25. Among other things, the current proposed  
21 Settlement has a narrower Settlement Class, covers a shorter Settlement Class Period,  
22 has a different distribution formula, and has a higher per class member recovery, than  
23 the earlier settlement. *Id.* at ¶26.

#### 24 **IV. THE COURT'S ORDERS REGARDING PRELIMINARY APPROVAL**

25 On October 10, 2024, the Court issued an Order Conditionally Granting  
26 Plaintiff's Motion for Preliminary Approval of Class Action Settlement. *See* ECF  
27 No. 46. Among other things, the Order "conditionally certifie[d] the Class for  
28 settlement purposes only" and "appoint[ed] Barbara Grady to serve as Class

1 Representative, and Joshua Konecky to serve as Class Counsel.” ECF No. 46 at 15.  
2 With respect to preliminary approval and Rule 23(e)(2)(A) in particular, the Court  
3 found that Ms. Grady and Class Counsel adequately represented the Class and that  
4 the Settlement Agreement was reached after they obtained an adequate information  
5 base through extensive discovery focused on the relevant issues. *Id.* at 18-19. The  
6 Court also found that the targeted discovery produced a more refined Settlement  
7 Agreement that included a better-defined distribution formula. *Id.* at 19. With respect  
8 to preliminary approval and Rule 23(e)(2)(B), the Court found that the “Settlement  
9 was reached in this matter after extended, arms-length negotiations between the  
10 parties” and that “[t]he parties also substantively refined the Settlement agreement in  
11 response to the Court’s concerns, raised [in connection with the previous settlement  
12 agreements].” *Id.* at 19.

13 In evaluating the value of the Settlement as measured against the costs, risks,  
14 and delay of trial and appeal, the Court observed a significant compromise made  
15 against the maximum potential trial recovery, but also recognized that this maximum  
16 potential was “an unattainable best-case scenario,” in light of factors such as the more  
17 realistic violation rates and the challenges in proving wilful, knowing and intentional  
18 conduct causing injury for the penalty claims (which made up a significant portion of  
19 the maximum potential trial recovery). *Id.* at 21-22. Ultimately, “the Court [was]  
20 confident that the [\$1,026,206.75]<sup>1</sup> recovered for the Class represents a reasonable  
21 percentage of the realistic trial recovery.” *Id.* at 22. The Court also noted that the  
22 “estimated average recovery per Class Member—\$897.67 plus any allocation of the  
23

24 <sup>1</sup> Plaintiff’s Motion for Preliminary Approval had estimated that the net settlement  
25 amount to the Class Members plus the 25% net PAGA payment to the Aggrieved  
26 Employees to be \$1,026,206.75. *See* ECF No. 44 at 1:28-2:1, 22:24-27. Plaintiff  
27 further estimated the net settlement payment on average to be \$897.67 per individual,  
28 not including the individual PAGA payment to the Class Members who also are  
PAGA Members. *Id.* at 22:28-23:1.

1 PAGA payment for PAGA Members—is also a meaningful amount.” *Id.* at 22.  
2 Finally, the Court found that the Settlement eliminated significant risks of further  
3 litigation, including the risk that Plaintiff would not be able to rely on facially  
4 unlawful policies, that she might not be able to demonstrate a pattern and practice of  
5 wage-and-hour violations, and that she might not be able to win and maintain class  
6 certification through trial and a possible appeal. *Id.* at 22.

7 The Court found that the providing Settlement Class and PAGA Members with  
8 their settlement awards automatically, without the need to submit claim forms, was  
9 an effective method of distribution. *Id.* at 23. The Court also advised that a second  
10 (or even third) round of check distributions may be necessary if the residual  
11 remaining after the initial (or second) distribution is sufficient to allow for more than  
12 a *de minimis* second payment after subtracting the administrative costs of the  
13 additional distributions. *Id.* at 23-24.

14 In addition, the Court found that the proposed distribution formula, which  
15 allocates settlement awards for Class Members in proportion to their work shifts, with  
16 the longer work shifts at LAUSD and San Bernardino County being weighted 1.5  
17 times more than the shorter ones at Gingko, and apportions the PAGA payments  
18 proportionally based on pay periods, treats class members equitably relative to each  
19 other. *Id.* at 25-26. The Court also concluded that the proposed service award of  
20 \$5,000 to Ms. Grady is not inequitable. *Id.* at 26. The Court further concluded that  
21 the arrangement for payment of attorneys’ fees not to exceed 25% of the Settlement  
22 fund was consistent with the Ninth Circuit benchmark and did not appear to have any  
23 collusive red flags, subject to further evaluation after Plaintiff brings her motion for  
24 attorneys’ fees and costs pursuant to Fed. R. Civ. P. 23(h). *Id.* 24.

25 The Court then approved JND as the Settlement Administrator and approved the  
26 Settlement Notice, subject to the parties including email notice and making other  
27 changes to comply with Fed. R. Civ. P. 23(c)(2)(B). ECF No. 46 at 27-28, 29. The  
28 parties made these changes as reflected in a supplement to the Motion filed on

1 October 15, 2024. *See* ECF No. 47.

2 The Court further ordered that the parties provide notice pursuant to the Class  
3 Action Fairness Act (CAFA) to the relevant state and federal authorities at least ninety  
4 (90) days before the Final Fairness Hearing. *See* ECF No. 46 at 28-29. The Court  
5 also advised that at final approval, the parties “consider separately justifying the  
6 PAGA portion of the Settlement, using the distinct standards for approval of PAGA  
7 settlements, when moving for final approval.” *Id.* at 26.

8 In consideration of the Rule 23(e) factors, as supplemented by relevant authority  
9 in the Ninth Circuit, “the Court preliminarily conclude[d] that the Settlement  
10 Agreements is fair, reasonable, and adequate, and appears to be the product of serious,  
11 informed, non-collusive negotiations.” *Id.* at 26. Before granting final approval, the  
12 Court directed the parties to make certain amendments to the Settlement Agreement.  
13 *Id.* at 26, 29. On October 15, 2024, Plaintiff filed the Supplement to Plaintiff’s  
14 Motion for Preliminary Approval of Cass Action and PAGA Settlement, which  
15 contained the updated Settlement and amended Class Notice containing the changes  
16 required for preliminary approval. *See* ECF No. 47.

17 On November 13, 2024, the Court preliminarily approved the settlement,  
18 granted class certification for the Settlement Class as defined in the Settlement  
19 Agreement, and approved Ms. Grady as the Class Representative and Joshua  
20 Konecky as Class Counsel to act on behalf of the Settlement Class. *See* ECF No. 48  
21 at 2. The Court further approved the form and content of the amended Class Notice,  
22 confirmed approval of JND to serve as the Settlement Administrator, and directed the  
23 Settlement Administrator and the parties to implement the Settlement in accordance  
24 with the terms of the Agreement and the Court’s Orders. *Id.* at 2-4. The Court also  
25 set the final approval hearing and advised as to the matters that will be considered  
26 and related procedures. *Id.* at 4-6.

27 **V. ISSUANCE OF THE SETTLEMENT NOTICE AND CAFA NOTICE**

28 The Declaration submitted by the Settlement Administrator attest to the

1 Settlement Notice and CAFA Notice being issued in accordance with the terms of the  
2 Court's Preliminary Approval Order. *See* Declaration of Alex Williams.

3 As a preliminary matter, the Administrator attests to providing the notices  
4 required by the Class Action Fairness Act (CAFA) on October 25, 2024. *Id.* at ¶¶7-8  
5 and Exhibit A.

6 Next, the Administrator confirms there were 1,097 unique Class Members in the  
7 Class Data provided by Defendant and attests to sending the Notice to each of them  
8 at their last known address by U.S. Mail. *Id.* at ¶¶5, 9-10 and Exhibit B. Before  
9 sending the Notice, the Administrator performed NCOA address searches for each  
10 Class Member with the Post Office. *Id.* at ¶10. The Administrator also will forward  
11 any Notices returned as undeliverable to new addresses provided by the Post Office  
12 or found through advanced searches (skip tracing). *Id.* at ¶11.

13 The Administrator also attests to sending the Notice by email to the 1,077 Class  
14 Members who had email addresses in the Class Data, with a 98.8% successful  
15 delivery rate. *Id.* at ¶¶11-12 and Exhibit C.

16 Further, the Administrator has established the Settlement Website and toll-free  
17 information lines. *Id.* at ¶¶13-19.

## 18 VI. KEY TERMS OF THE PROPOSED SETTLEMENT

19 The key terms of the Settlement Agreement include:

- 20 • Gross Settlement Amount: The Gross Settlement Amount is \$1,658,410.  
21 *See* Settlement Agreement, at ¶¶15, 53, attached as Exhibit A to Konecky  
22 Decl. The Gross Settlement Amount does *not* include the employer's share  
23 of payroll taxes, which Defendant will pay separately in addition to the  
24 Gross Settlement Amount. *Id.* at ¶¶12, 15, 63.
- 25 • No Reversion: All settlement funds will be paid out, and none will revert  
26 to Defendant. *Id.* at ¶53.
- 27 • Class Period: The Class Period is March 1, 2020 to March 7, 2023. *Id.* at  
28 ¶7.
- 29 • PAGA Period: The PAGA Period is July 22, 2020 through March 7, 2023.  
*Id.* at ¶23.

- 1     • Settlement Class: The Settlement Class comprises all those employed as  
2     non-exempt, hourly paid nurses by Defendant RCM in California at any  
3     time between March 1, 2020 and March 7, 2023 and assigned by RCM to  
4     work at COVID-19 testing or vaccination sites for San Bernardino County  
5     (including Arrowhead Regional Medical Center), or K-12 schools for  
6     LAUSD or Ginkgo. *Id.* at ¶6.
- 7     • PAGA Members: The PAGA Members are the subset of Class Members  
8     employed by RCM during the PAGA Period, July 22, 2020 to March 7,  
9     2023. *Id.* at ¶20.
- 10    • Participating Class Members: The Participating Class Members are the  
11    Settlement Class Members and the PAGA Members. *Id.* at ¶25
- 12    • Release by Participating Class Members: The Released Claims are limited  
13    to the Participating Class Members and the claims that were pled in the  
14    Complaint, based on or arising out of the factual allegations therein, during  
15    the applicable Class and PAGA Periods. *Id.* at ¶¶27, 58; *see also* Notice to  
16    Class, Exh. B to Konecky Decl. & Exh. 1 to Settlement Agreement at §9.
- 17    • PAGA Release: The PAGA Release is limited to the PAGA Members and  
18    the claims for civil penalties under PAGA that arise out of or relate to the  
19    statutes and regulations pled in the PAGA Notice and Class Action and  
20    PAGA Complaint during the PAGA Period. Settlement Agreement at ¶¶24,  
21    59; *see also* Notice to Class at at §9.
- 22    • Net Settlement Amount: The Net Settlement Amount is the Gross  
23    Settlement Amount less the Class Counsel Award, Class Representative  
24    Service Award, LWDA Payment, and Settlement Administration Costs.  
25    Settlement Agreement at ¶18.
- 26    • Direct Payments to Settlement Class Members / No Claim Forms:  
27    Settlement Class Members who do not opt out of the Settlement will not  
28    need to submit claims to receive their pro-rata settlement payment. *Id.* at  
   ¶61. Rather, Individual Settlement Awards and Individual PAGA Payments  
   (i.e., settlement checks) will be automatically sent to all Class Members for  
   whom a valid address can be located either through Defendant's records,  
   and/or by the Settlement Administrator through the National Change of  
   Address database (NCOA) and/or by skip tracing and other research. *Id.*  
   at ¶¶61(a)(i)-(ii).
- Distribution Formula: The distribution formula values the shifts for  
   providing Covid testing and/or vaccinations at Ginkgo K-12 sites at 1.0,  
   and the shifts at LAUSD K-12 sites and San Bernardino County sites at  
   1.5. *Id.* at ¶61(f). This reflects the lower hours worked at the Ginkgo K-12

1 assignments, among the other factors discussed below.

2

- 3 • PAGA Payment: The Parties have agreed to pay the California Labor and  
4 Workforce Development Agency (“LWDA”) and the employees in  
5 connection with the claims under the California Labor Code Private  
6 Attorneys General Act of 2004, California Labor Code Sections 2698, *et seq.* (“PAGA”). Settlement Agreement at ¶54. The Parties have agreed that  
7 One Hundred Sixty-Five Thousand Eight Hundred and Forty-One Dollars  
8 (\$165,841.00)—ten percent (10%) of the Gross Settlement Amount—will be  
9 allocated to the resolution of the claims arising under PAGA. Pursuant to  
10 Labor Code Section 2699(i), it would be distributed as follows: 25%, or  
11 \$41,460.25, to the Settlement Class Members and 75%, or \$124,380.75, to  
12 the LWDA (the “LWDA Payment”). *Id.*<sup>2</sup>
- 13 • Tax Allocation: Subject to Court approval, the Parties further agree to the  
14 following as a reasonable and fair tax allocation for Individual Settlement  
15 Awards: one-third (33%) as alleged unpaid wages subject to all applicable  
16 tax withholdings; one-third (33%) as alleged unpaid interest; and one-third  
17 (33%) as alleged unpaid penalties. *Id.* at ¶61(g)(ii). Subject to Court  
18 approval, the Parties further agree that Individual PAGA Awards shall be  
19 allocated as alleged unpaid civil penalties for which an IRS Form 1099  
20 shall be issued. *Id.*
- 21 • Class Representative Service Award: The Settlement provides that Plaintiff  
22 may seek a service payment not to exceed \$5,000.00, subject to Court  
23 approval. *Id.* at ¶8. The proposed service payment is approximately 0.3  
24 percent of the Gross Settlement Amount. Konecky Decl. at ¶108.
- 25 • Class Counsel Award: Class Counsel’s fees and costs are included in the  
26 Gross Settlement Amount of \$1,658,410. The Settlement provides that  
27 Plaintiff may make a motion to the Court for up to twenty-five percent  
28 (25%) of the Gross Settlement Amount in attorneys’ fees, plus  
reimbursement of actual, reasonable, costs not to exceed \$50,000.00.  
Settlement Agreement at ¶4.
- Settlement Administration Costs: The costs of settlement administration  
are included in the gross settlement amount of \$1,658,410. *Id.* at ¶33. JND  
estimates that the administration costs will not exceed \$39,220, exclusive

25  
26 <sup>2</sup> The Legislature has since amended PAGA such that 65% of the civil penalties  
27 recovered will be distributed to the LWDA and 35% to the aggrieved employees. *See*  
Cal. Labor Code § 2699(m). However, this new distribution formula applies to cases  
initiated on or after June 19, 2024. *See* 2024 Cal. Legis. Serv. Ch. 44 (A.B. 2288).

1 of any second and/or third distribution that may occur. *See* Id. at ¶62;  
2 Williams Decl. at ¶26

3

- 4 • Right to Object: Settlement Class and PAGA Members who wish to object  
5 to the Settlement have until January 27, 2025—45 days following the  
6 issuance of the Settlement Notice—to postmark their Notice of Objection  
7 to the Settlement. *Id.* at ¶¶24-25; Settlement Agreement at ¶¶19, 30. The  
8 Settlement Notice informed Class and PAGA Members of their right to  
9 object and appear at the final fairness hearing. *See* Notice to Class at §12.  
10 Class Members may sign or e-sign their objections. *Id.*
- 11 • Right to Opt Out: Settlement Class Members who wish to exclude  
12 themselves from the Settlement (opt out) have until January 27, 2025—45  
13 days following the issuance of the Settlement Notice—to postmark their  
14 Request for Exclusion. *See* Williams Dec. at ¶¶23-24; Settlement  
15 Agreement at ¶¶29-30. The Settlement Notice informed Class Members of  
16 their right to opt out. *See* Notice to Class at §11. Class Members may sign  
17 or e-sign their Request for Exclusion. *Id.* Any Class Member who submits  
18 a completed, signed, and timely written Opt-Out shall no longer be a  
19 member of the Class, although they still will be PAGA Members and  
20 subject to the PAGA Release. Settlement Agreement at ¶29; Notice to Class  
21 at § 11; *Arias v Superior Ct. (Dairy)*, 46 Cal.4th 969 (2009).
- 22 • Right to Challenge Defendant's Records. Settlement Class and PAGA  
23 Members who dispute RCM's records with respect to their applicable shifts  
24 have until January 27, 2025—45 days following the issuance of the  
25 Settlement Notice—to postmark a “Workshift Dispute” with  
26 documentation and/or an explanation to show a contrary number of shifts.  
27 *See* Williams Dec. at ¶¶23-24; Settlement Agreement at ¶¶36, 61(f)(iv).  
28 The Settlement Notice informed Class and PAGA Members of the number  
of shifts and adjusted shifts applicable to them and their right and  
procedures for disputing this number, including the ability to submit a  
dispute electronically with an e-signature. *See* Notice to Class at §7. All  
shift disputes will be resolved and decided by the Settlement Administrator,  
with consultation with Defense and Class Counsel as appropriate.  
Settlement Agreement at ¶36.
- Additional Distributions to Class Members. Class and PAGA Members  
will have 180 days to cash their checks. If the amount remaining in the  
Settlement Fund after this check cashing period is sufficient for a second  
distribution of more than a de minimis payment to the Class Members who  
timely cashed their first check, the Administrator will make a second  
distribution in the same proportions as the first distribution. A third  
distribution will occur if a sufficient amount remains in the settlement

1 funds after the second distribution. The total remaining in the settlement  
2 fund after the last distribution will be transmitted to a Court-approved cy  
3 pres beneficiary. *See Settlement Agreement at ¶61(g).* As discussed below,  
4 the parties propose the State Bar's Justice Gap Fund as cy pres beneficiary  
5 for the Court's consideration.

## 6 **VII. ARGUMENT**

### 7 **A. The Court Should Grant Final Approval to the Class Action Settlement**

#### 8 **1. The standards for final approval**

9 As discussed by the Court in its Preliminary Approval Order, Rule 23(e)(2)  
10 provides the standards for court approval of a class action settlement in federal court.  
11 *See ECF 46 at 16.* The Rule provides:

12 If the proposal would bind class members, the court may approve it  
13 only after a hearing and only on finding that it is fair, reasonable, and  
14 adequate after considering whether:

15 (A) the class representatives and class counsel have adequately  
16 represented the class;

17 (B) the proposal was negotiated at arm's length;

18 (C) the relief provided for the class is adequate, taking into account:

19 (i) the costs, risks, and delay of trial and appeal;

20 (ii) the effectiveness of any proposed method of distributing relief  
21 to the class, including the method of processing class-member claims;

22 (iii) the terms of any proposed award of attorney's fees, including  
23 timing of payment; and

24 (iv) any agreement required to be identified under Rule 23(e)(3);  
25 and

26 (D) the proposal treats class members equitably relative to each  
27 other.

28 Fed. R. Civ. P. 23(e)(2).

29 Additionally, case law from the Ninth Circuit over the past 40 years provides an  
30 overlapping set of factors that may be used as guidance to evaluate whether a  
31 settlement is fair, reasonable, and adequate under Rule 23(e)(2). *See ECF 46 at 16-*

1 17 (discussing Ninth Circuit factors and guidance offered from same) (citing *Officers*  
2 *for Justice v. Civil Service Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982); *Staton v.*  
3 *Boeing Co.*, 327 F.3d 938, 959 (9th Cir. 2003)). These factors include “[1] the  
4 strength of plaintiffs' case; [2] the risk, expense, complexity, and likely duration of  
5 further litigation; [3] the risk of maintaining class action status throughout the trial;  
6 [4] the amount offered in settlement; [5] the extent of discovery completed, and the  
7 stage of the proceedings; [6] the experience and views of counsel; [7] the presence  
8 of a governmental participant; and [8] the reaction of the class members to the  
9 proposed settlement.” ECF 46 at 16-17 (quoting *Staton*, 327 F.3d at 959).

10 The law favors the compromise and settlement of class-action suits on fair and  
11 reasonable terms. *See, e.g., Churchill Vill. L.L.C. v. Gen. Elec.*, 361 F.3d 566, 576  
12 (9th Cir. 2004); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir.  
13 1992); *Officers for Justice*, 688 F.2d at 625. As observed by the Court, this “strong  
14 judicial policy that favors settlements, particularly where complex class action  
15 litigation is concerned” is balanced by the need “to protect the unnamed members of  
16 the class from unjust or unfair settlement affecting their rights[.]” ECF 46 at 16  
17 (quoting *Linney v Cellular Alaska P'ship*, 151 F.3d 1234, 1238 (9th Cir. 1998) and  
18 *In re Syncor ERISA Litig.*, 516 F.3d 1095, 1100 (9th Cir. 2008)).

19 Final approval of a class action settlement is appropriate when “the agreement  
20 is not the product of fraud or overreaching by, or collusion between, the negotiating  
21 parties, and [] the settlement, taken as a whole, is fair, reasonable and adequate to all  
22 concerned.” *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998) (internal  
23 citations omitted); *see also In re Bluetooth Headset Prods. Liab. Litig.*, 654 F.3d 935,  
24 946-47 (9th Cir. 2011); Fed. R. Civ. P. 23(e).

25 2. The Class representative and Class counsel have adequately  
26 represented the Class

27 As the Court found at preliminary approval, Ms. Grady and Class Counsel have  
28 been adequately representing the class and obtained sufficient information to make

1 an informed settlement decision. ECF No. 46 at 18-19. Indeed, Class Counsel  
2 engaged in extensive and targeted discovery to gain a firm understanding of the work  
3 assignments of the class members, the job duties of the class members, the policies  
4 of RCM, and the competing evidence and arguments as to how RMC's policies  
5 impacted the provision of meal and rest periods and timekeeping practices for the  
6 nurses in the field. *See Konecky Decl.* at ¶¶20-22.

7 The discovery Counsel obtained included: (1) the production of employee  
8 handbooks, written policies, timecards, and template emails concerning RCM's  
9 expectations with respect to meal periods and timekeeping; (2) interrogatory  
10 responses specifying the breakdown of assignment types and work settings for the  
11 nurses in the class; (3) the deposition of RCM's Rule 30(b)(6) designee witness and  
12 the deposition of RCM's Travel Division Manager, for further detail regarding these  
13 subjects; (4) interviews with numerous class members regarding their experiences in  
14 the field (some of whom submitted sworn declarations in support of the Motion for  
15 Class Certification); and (5) wage and shift data that enabled Plaintiff to run damages  
16 calculations for the Class. *Id.* at ¶¶20-22, 44, 50-52, 78. In addition, Ms. Grady  
17 appeared for a full day of deposition to provide information about her experience  
18 working as a nurse for RCM in California during the Covid-19 pandemic. *See Grady*  
19 *Decl.* at ¶6; *Konecky Decl.* at ¶¶21, 106.

20 Since the Court's Preliminary Approval Order, Class Counsel has worked  
21 diligently with the Settlement Administrator and cooperatively with Defense Counsel  
22 to ensure implementation of the Settlement Notice. This has included reviewing and  
23 providing comments to the final versions of the Class Notice and Settlement Website  
24 to ensure compliance with the Settlement Agreement and Preliminary Approval  
25 Order, reviewing and commenting on the CAFA Notices, and monitoring  
26 implementation of the foregoing. *See Konecky Decl.* at ¶67. Class Counsel is  
27 committed to continuing to monitor the Settlement and respond to inquiries from any  
28 Class Members who may have questions regarding the Settlement as well as their

1 rights and options. *Id.* Class Counsel will provide the Court with additional  
2 information as to the responses of the Class Members in conjunction with the Reply  
3 Brief. *Id.*

### 3. The Settlement was negotiated at arms-length

5 As shown above, the parties were well-informed and well-positioned to  
6 negotiate a fair, reasonable, and adequate settlement. Over the course of the case,  
7 the parties and counsel engaged in two full-day mediations with Michael Loeb of  
8 JAMS, an experienced class action mediator who is very knowledgeable about the  
9 substantive law and procedures applicable to wage and hour cases. *See* Konecky  
10 Decl. at ¶25. After extensive negotiation, the parties ultimately agreed to a  
11 mediator’s proposal presented by Mr. Loeb at the close of the second session. *Id.* As  
12 the Court observed in at preliminary approval, the negotiations also resulted in a  
13 refined Settlement that addressed concerns the Court raised earlier. *See* ECF No. 46  
14 at 19.

4. The relief provided to the Class is fair, reasonable, and adequate taking into account the strengths, risks, potential exposure, and other relevant factors.

18        “The proposed settlement is not to be judged against a hypothetical or  
19 speculative measure of what might have been achieved by the negotiators.” *Officers*  
20 *for Justice*, 688 F.2d at 625 (citations omitted). Indeed, “it is the very uncertainty of  
21 outcome in litigation and avoidance of wasteful and expensive litigation that induce  
22 consensual settlements.” *Id.* Thus, “it is well-settled law that a proposed settlement  
23 may be acceptable even though it amounts to only a fraction of the potential recovery  
24 that might be available to the class members at trial.” *Nat’l Rural Telecomm’s Coop*  
25 *v. Directv, Inc.*, 221 F.R.D. 523, 527 (C.D. Cal. 2004) (citing *Linney v. Cellular Alaska*  
26 *Partnership*, 151 F.3d 1234, 1242 (9th Cir. 1998) (additional citations omitted)). That  
27 is particularly the case here where the potential recovery is premised on an  
28 unattainable 100% violation rate (which does not comport with either side’s

1 investigation) and achieving large civil penalties with heightened burdens of proof  
2 concerning intent. *See* ECF No. 46 at 21-22.

3 As the Court observed in its Preliminary Approval Order, the competing  
4 arguments and potential burdens of proof facing Plaintiff through the various stages  
5 of litigation presented various risks confronting Plaintiff with continued litigation  
6 through class certification, summary judgment, trial and potential appeals. *See* ECF  
7 No. 46 at 22; *see also* Konecky Decl. at ¶¶61. After considering these strengths, risks,  
8 delays of further litigation, and potential exposure, the Settlement provides a strong  
9 result for the Class. *See* Konecky Decl. at ¶¶50-65.

10 Class Counsel calculated Defendant's potential exposure based on specific  
11 information as to the shifts worked, time recorded for the shifts, the client for the  
12 shifts, and the hourly wage rate, for each Class Member, as exported by Defendant  
13 from its ADP and SAP concur time and payroll systems. *See* Konecky Decl. at ¶44-  
14 49. The exposure that Plaintiff calculated, the discounts to this exposure, and the  
15 reasoning therefor, are discussed in counsel's Declaration. *Id.* at ¶¶50-65. They also  
16 are analyzed in the Court's Preliminary Approval Order. *See* ECF No. 46 at 20-22.

17 After estimated attorneys' fees and costs, the proposed service award, the LWDA  
18 payment, and the estimated costs of settlement administration, there will be an  
19 estimated \$1,027,998.27 for distribution to the Settlement Class and PAGA Members.  
20 *See* Konecky Decl. at ¶38. There are approximately 1,097 Settlement Class  
21 Members. *Id.* The average net Settlement Share will be approximately \$899.31 per  
22 individual, not including the Individual PAGA Payments for the Class Members who  
23 also are PAGA Employees. *Id.*<sup>3</sup>

24

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25 <sup>3</sup> The Net Settlement and average payments per Class Member and PAGA Member  
26 are slightly higher now than at preliminary approval because Plaintiff is not seeking  
27 the full \$50,000 previously estimated for reimbursement of litigation costs.  
28 Additionally, the number of Class Members estimated at preliminary approval is the  
same as the number now shown in the Class Data, while the number of shifts is very

1       Under the weighted distribution formula discussed below, the average  
2 Settlement Share will be approximately \$1,245.86 per individual who worked at  
3 “pop-up” sites or LAUSD K-12 sites (not including the PAGA payment); and \$615.52  
4 per individual who worked at Ginkgo K-12 school sites. *Id.* at ¶40. The amount will  
5 increase or decrease for each Class Member depending upon the number of shifts the  
6 Class Member has worked for each assignment type during the Class Period. *See*  
7 Settlement Agreement at ¶44.

8       Further, based on counsel’s investigation, the average recovery is a reasonable  
9 approximation of the premium wages that might be owed for noncompliant meal and  
10 rest periods if the claims were successful on the merits. The weighted average hourly  
11 wage for the Settlement Class Members is approximately \$38.27. Konecky Decl. at  
12 ¶49. In turn, the average recovery per shift worked is \$15.92. *Id.* at ¶38. This wage  
13 recovery is within the violation rate that Plaintiff’s counsel estimated based on their  
14 interviews with the Class Members. *Id.* at ¶45.

15       In the Preliminary Approval Order, the Court found that “[ \$1,026,206.75 ]  
16 recovered for the Class represents a reasonable percentage of the realistic trial  
17 recovery” and that the estimated individual recoveries are meaningful as well. *See*  
18 ECF No. 46 at 22. Additionally, after this case was filed, Defendant hired a “Senior  
19 HR California labor specialist” to implement California-specific policies and  
20 procedures pertaining to meal and rest periods. *See id.* at ¶66. These policy changes,  
21 adopted after the lawsuit, provide an additional benefit that supports final approval.

22       5.       The Settlement is fair, reasonable, and adequate taking into  
23                   account the method of distributing relief to the Class

24       The Settlement provides a fair and equitable procedure for distributing relief to

25  
26       nearly the same. the parties estimated approximately 1,097 Class Members who  
27       worked approximately 61,902 Workshifts during the Class Period. *See* Settlement  
28       Agreement at ¶68.

1 the Class. Class Members who do not opt out will receive their payments  
2 automatically by mail without the need to file claims. *See* Agreement at ¶61.g.  
3 Further the Parties have added a procedure for conducting a second (and possibly  
4 third) distribution if there is sufficient residual to permit more than a de minimis  
5 payment to Class Members who cashed their previous check(s). *Id.* at ¶61.g. Any  
6 residual remaining after the last distribution will be transferred to a Court-approved  
7 *cypres* beneficiary. *Id.*

8 Further, the Settlement Administrator has provided the Court approved  
9 Settlement Notice to the Settlement Class Members by mail and email, and will  
10 perform skip tracing to resend Notices to Class Members for whom the initial Notice  
11 is returned as undeliverable. *See* Administrator Decl. at ¶¶9-12. Settlement Class  
12 Members will have 45-days to opt out, or to object and/or dispute the calculation of  
13 their awards. *See* Settlement Agreement at ¶¶29-30, 36. Class Members will also be  
14 given the opportunity to object to the Settlement and, at the Court's discretion, to  
15 appear at the Final Approval/Fairness Hearing to have their objections heard by the  
16 Court. *Id.* at ¶¶19, 30; *see also* Class Notice at §§12, 17.

17 **6. The Settlement is fair, reasonable, and adequate taking into**  
18 **account the proposed award of attorney's fees**

19 Class Counsel is filing a separate motion for attorneys' fees and costs pursuant  
20 to Fed. R. Civ. P. 23(h). Under the Amended Settlement Agreement, Plaintiff will not  
21 seek attorneys' fees above the 25% benchmark in the Ninth Circuit. *See* Settlement  
22 Agreement at ¶4. In addition, Plaintiff will seek reimbursement of out-of-pocket  
23 costs of \$47,768.17. *See* Konecky Decl. at ¶103. To date, Plaintiff has invested more  
24 than 920 hours into the case and anticipates that the maximum fee being sought will  
25 result in a negative multiplier on the lodestar. *Id.* at ¶69. Plaintiff's Motion for  
26 Attorneys' Fees and Costs will further discuss the reasonableness of the attorneys'  
27 fees and costs being sought.

7. The proposed Settlement treats Class Members equitably relative to each other

3 At preliminary approval, the Court concluded that the Settlement Agreement  
4 proposed equitable treatment of the Class Members. *See* ECF No. 46 at 25-26.  
5 Indeed, the Parties have proposed a distribution formula that reasonably reflects the  
6 differential in the value of claims between those Class Members worked at the “pop  
7 up” sites and LAUSD K-12 school sites, on the one hand, versus those who worked  
8 at the Ginkgo K-12 school sites, on the other. Specifically, the proposed distribution  
9 formula values the shifts for providing Covid testing at the “pop up” sites and LAUSD  
10 K-12 sites at a rate of 1.5 to 1 to those at the Ginkgo K-12 schools. *See* SA at ¶61.f.i.  
11 This reflects the likely differential in average violations incurred by Settlement Class  
12 Members given the shorter shifts worked at the Ginkgo sites, as further explained in  
13 Class Counsel’s Declaration. *See* Konecky Decl. at ¶43.

Finally, the \$5,000 service award sought on behalf of Ms. Grady does not result in an inequitable distribution to the Class Representative. *See* ECF No. 46 at 26 (citing *Carlin v. DairyAmerica, Inc.*, 380 F.Supp.3d 998, 1024 (E.D. Cal. 2019)). The reasonableness of the service award here is further discussed in Plaintiff's separate Motion for Service Award.

8. The proposed cy pres recipient is appropriate

20 Paragraph 61(g)(iii)(3) of the Settlement provides that any residual remaining  
21 after the final distribution will be transferred to a *cy pres* recipient approved by the  
22 Court and that the parties will propose an appropriate *cy pres* with the final approval  
23 motion. The parties propose the State Bar’s Justice Gap Fund for the Court’s  
24 consideration as the *cy pres* beneficiary. The California Legislature created the  
25 Justice Gap Fund in 2006, and it is one of the significant “sources of funding for

1 about 100 legal aid organizations across the state providing free civil legal services.”<sup>4</sup>  
2 The Justice Gap Fund serves the public, and workers specifically, by “protecting the  
3 rights of consumers and workers to avoid fraud and exploitation.” *Id.* The Justice  
4 Gap Fund is an appropriate *cy pres* beneficiary because its mission includes ensuring  
5 the enforcement of the California Labor Code and ensuring workers receive all  
6 wages earned pursuant to the California Labor Code. *See Bloom v. ACT*, CV18-6749  
7 GW, 2024 Lexis 58314 (C.D. Cal. March 29, 2024)(Reasoning that a non-profit was  
8 an appropriate *cy pres* recipient because its mission of “advancing the rights of  
9 individuals” that composed the class bore “a substantial nexus to the interests of the  
10 Class Members.”).

11 **B. The Court Should Approve the PAGA Portion of the Settlement**

12 PAGA settlements are subject to court review and approval. *See Labor Code §*  
13 2699(s)(2). Although there is no definitive standard for approval of a PAGA  
14 settlement, *see Flores v. Starwood Hotels & Resorts Worldwide, Inc.*, 253 F. Supp.  
15 3d 1074, 1075 (C.D. Cal. 2017)), a number of District Courts in the Ninth Circuit  
16 have evaluated PAGA settlements by reference to whether “the settlement terms are  
17 fundamentally fair, adequate, and reasonable in light of PAGA’s policies and  
18 purposes.” *Jordan v. NCI Group., Inc.*, Case No. EDCV 16-1701 JVS (SPx), 2018  
19 WL 1409590, \*2 (C.D. Cal. Jan. 5, 2018) (citing cases). “Those purposes and  
20 policies include ‘benefit[ting] the public by augmenting the state’s enforcement  
21 capabilities, encouraging compliance with Labor Code provisions, and deterring  
22 noncompliance.’” *Vargas v. Cent. Freight Lines, Inc.*, Case No.: 16-cv-00507-JLB,  
23 2017 WL 4271893, at \*3 (S.D. Cal., Sept. 25, 2017) (quoting *O’Connor v. Uber  
Techs., Inc.*, 201 F. Supp. 3d 1110, 1132-33 (N.D. Cal. 2016)).

25 While a PAGA representative action is distinct from a Rule 23 class action,  
26

27 <sup>4</sup> The State Bar of California, The Justice Gap Fund, <https://www.calbar.ca.gov/Access-to-Justice/Grants/Justice-Gap-Fund> (last visited December 26, 2024).  
28

1 *Flores*, 253 F. Supp. 3d at 1076, the reasons discussed above as to why the Settlement  
2 is fair, reasonable, and adequate under Rule 23 also show that the PAGA claims were  
3 negotiated at arms-length and with a sufficient information base, and that Counsel's  
4 exposure and risk analyses were reasonable.

5 It also bears noting that Counsel conducted a specific exposure and risk analysis  
6 for the PAGA claims. *See Konecky Decl.* at ¶¶48-49. This analysis considered,  
7 among other things, arguments concerning the "stacking" of penalties that may be  
8 argued by Defendant, arguments concerning whether to apply the \$100 or \$200 civil  
9 penalty, and whether the Court might exercise its discretion to reduce penalties based  
10 on a determination that "to do otherwise would result in an award that is unjust,  
11 arbitrary and oppressive, or confiscatory" under Labor Code § 2699(e)(2). *See*  
12 *Konecky Decl.* at ¶63.

13 The parties' agreement to allocate ten percent of the Gross Settlement Amount  
14 to PAGA is also reasonable. Indeed, courts have approved amounts for PAGA  
15 penalties within the range of zero to two percent of a settlement amount. *See Hopson*  
16 *v. Hanesbrands Inc.*, No. CV-08-0844 EDL, 2009 WL 928133, at \*1, \*9 (N.D. Cal.,  
17 Apr. 3, 2009) (approving a PAGA payment of \$1,500 from \$408,420 Maximum  
18 Settlement Amount—0.37%); *Jack v. Hartford Fire Ins. Co.*, No. 3:09-cv-1683-  
19 MMA(JMA), 2011 WL 4899942, at \*1, \*6 (S.D. Cal., Oct. 13, 2011) (approving a  
20 PAGA payment of \$3,000 from \$1,200,000 settlement fund—0.25%); *Reed v.*  
21 *Thousand Oaks Toyota*, 56-2012-00419282-CU-OE-VTA, 2013 WL 8118716 (Cal.  
22 Super. Ct. Apr. 8, 2013) (1.3%); *Bolton v. U.S. Nursing Corp.*, No. C 12-4466 LB,  
23 2013 WL 5700403, \*2 (N.D. Cal. Oct. 18, 2013) (approving \$15,000 PAGA  
24 allocation from total settlement of \$1,700,000—0.88%); *McKenzie v. Fed. Express*  
25 *Corp.*, CV 10-02420 GAF (PLAx), 2012 WL 12882124, at \*5 (C.D. Cal. Jan. 23,  
26 2012) ("This allocation represents one percent of the \$8.25 million maximum  
27 settlement amount, and Plaintiff correctly notes that this is within the zero to two  
28 percent range for PAGA claims approved by courts.") (collecting cases).

1 The Settlement is also divided in accordance with the statute's distribution  
2 formula that is applicable to the PAGA claims in this case, which were initiated by  
3 Plaintiff's initial notice letter to the LWDA on July 22, 2021. Under the version of  
4 the PAGA that applies to PAGA claims initiated before June 19, 2024, 75% of the  
5 civil penalties recovered are paid to the LWDA and the remaining 25% are paid to  
6 the aggrieved employees. *See Labor Code § 2699(i), Stats.2016, c. 31 (S.B.836), §*  
7 *189, eff. June 27, 2016.*<sup>5</sup> The parties' compliance with applicable law as to the  
8 distribution of PAGA civil penalties is another factor in favor of granting approval of  
9 the PAGA Settlement. *Flores*, 253 F.Supp.3d at 1077; *Echavez v. Abercrombie &*  
10 *Fitch Co., Inc.*, Case No. CV 11-09754-GAF, 2017 WL 3669607, at \*4 (C.D. Cal.,  
11 March 23, 2017).

12 Finally, on July 26, 2024, the same day Plaintiff filed her Motion for  
13 Preliminary Approval in this Court, Plaintiff also provided notice of the Settlement  
14 to the Labor Workforce Development Agency, pursuant to California Labor Code §  
15 2699(s)(2). *See Konecky Decl.* at ¶29, and Exh. Z. To date, the LWDA has not  
16 submitted a comment or objection to the Settlement. *Id.* This also weighs in favor  
17 of approval. *See Jordan*, 2018 WL 1409590, at \*3; *Echavez v. Abercrombie & Fitch*  
18 *Co., Inc.*, Case No. CV 11-09754-GAF, 2017 WL 3669607, at \*3 (C.D. Cal., March  
19 23, 2017) ("[T]he Court finds persuasive that LWDA was invited to file a response to  
20 the proposed settlement agreement in this case and elected not to file any objections  
21 or opposition thereto. The Court infers LWDA's non-response is tantamount to its  
22 consent to the proposed settlement terms, namely the proposed PAGA penalty

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24  
25 <sup>5</sup> After the parties reached the Settlement, the Legislature amended the statute such  
26 that 65% of the civil penalties recovered will be distributed to the LWDA and 35%  
27 to the aggrieved employees. Cal. Labor Code § 2699(m). However, this new  
28 distribution formula applies to cases filed on or after June 19, 2024. *See* 2024 Cal.  
Legis. Serv. Ch. 44 (A.B. 2288).

1 amount.”).<sup>6</sup>

2 **VIII. CONCLUSION**

3 For the foregoing reasons, Plaintiff respectfully requests that the Court enter the  
4 accompanying Proposed Order granting Plaintiff’s Motion for Final approval of Class  
5 Action and PAGA Settlement.

6 **IX. REQUEST TO BE EXUSED FROM L.R. 11-6.1**

7 This brief contains 8,805 words, which exceeds the brief length limit of L.R.  
8 11-6.1. Plaintiff respectfully requests that the Court make an exception to the length  
9 limitation here to allow for the showing at issue and because the Motion is unopposed  
10 by Defendant, thereby likely reducing the number of briefs in total.

11  
12 Dated: December 26, 2024

*/s/ Joshua G. Konecky*

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13 Joshua G. Konecky  
14 **SCHNEIDER WALLACE**  
15 **COTTRELL KONECKY LLP**  
16 *Attorneys for Plaintiff*

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25 <sup>6</sup> The Aggrieved Employees also received Notice of the Settlement and will have an  
26 opportunity to object. SA at ¶19; Notice of Settlement at §12. Under applicable law,  
27 however, Class Members will not have an opportunity to object to the PAGA Release  
or opt out of the PAGA portion of the settlement, as this technically belongs to the  
State of California, which also is receiving notice of the Settlement. *Uribe v. Crown*  
*Building Maintenance Co.*, 70 Cal.App.5th 986, 1001 (2021) (citations omitted).

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that on December 26, 2024, I electronically filed the foregoing  
3 document with the Clerk of the Court using the Court's CM/ECF system, which will  
4 send a notice of electronic filing to all CM/ECF participants.

5 */s/ Joshua G. Konecky*  
6 Joshua G. Konecky  
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